

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** July 28, 2016

**TO:** Office of Commission Clerk (Stauffer)

**FROM:** Office of the General Counsel (Harper) *SMC*  
Division of Accounting and Finance (Barrett, Lester) *MCB PL* *AK* *CRE* *ALM*

**RE:** Docket No. 140001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

Docket No. 150001-EI – Fuel and purchased power cost recovery clause with generating performance incentive factor.

**AGENDA:** 08/09/16 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** 9/26/16 – Court temporarily relinquished jurisdiction to the Commission until this date.

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On June 25, 2014, Florida Power and Light Company (FPL) filed a petition (Petition) with the Commission for approval of FPL acquiring an interest in and cost recovery for a natural gas reserve project (Woodford Project). In the Petition, FPL further requested the Commission establish guidelines by which FPL could participate in future gas reserve projects without prior approval and recover the costs.

Docket No. 150001-EI

Date: July 28, 2016

The Commission bifurcated FPL's request to approve the Woodford Project from the portion of the petition requesting the guidelines. The Woodford Project and guidelines request were scheduled to be heard at separate agenda conferences.

On January 12, 2015, the Commission issued Final Order No. PSC-15-0038-FOF-EI, approving the Woodford Project (Woodford Order). Florida Industrial Power Users Group (FIPUG) and the Office of Public Counsel (OPC) appealed the Woodford Order.

On July 14, 2015, the Commission issued Final Order No. PSC-15-0284-FOF-EI, approving modified gas reserve guidelines for FPL (Guidelines Order). OPC and FIPUG appealed the Guidelines Order. The appeals were assigned Case Nos. SC15-1515 and SC15-1517. On September 25, 2015, the Court stayed the appeals of the Guidelines Order pending its decision on the Woodford Order.

In *Citizens of the State of Florida v. Graham*, 191 So. 3d 897, 902 (Fla. 2016) (Woodford Opinion), the Court reversed the Commission's Woodford Order. The Court held the Commission exceeded its statutory authority when approving cost recovery of FPL's costs and investment in the Woodford Project. *Id.*

Shortly after issuing its opinion on the Woodford Order, the Court lifted the stay of the appeals of the Guidelines Order. On June 15, 2016, the Commission, OPC, FIPUG, and FPL filed a Joint Motion to Relinquish Jurisdiction with the Court, requesting that the Court give jurisdiction back to the Commission, so that the Commission could vacate the Guidelines Order in accordance with the Woodford Opinion. On June 28, 2016, the Court granted the Joint Motion to Relinquish Jurisdiction and gave the Commission 90 days to reconsider the Guidelines Order.

This recommendation addresses whether the Commission should vacate the Guidelines Order.

## Discussion of Issues

**Issue 1:** Should the Commission vacate the Guidelines Order and dismiss FPL's Petition?

**Recommendation:** Yes. In accordance with the Woodford Opinion, the Guidelines Order (Order No. PSC-15-0284-FOF-EI) should be vacated and FPL's Petition should be dismissed.

**Staff Analysis:** In the Woodford Opinion, the Court held that the Commission exceeded its jurisdiction when it approved the Woodford natural gas reserves project. Accordingly, the Woodford Order has no force or effect. *See, e.g., Savery v. Savery*, 870 So. 2d 920, 921 (Fla. 4th DCA 2004) (holding that when a judgment is entirely reversed by the appellate court, it is as if the judgment had never been entered).

The Commission approved FPL's petition to establish guidelines to allow FPL to participate in future gas reserves projects before the Court issued its opinion on the Woodford Order. The basis for the Commission's jurisdiction over the Woodford Order is the same basis for its jurisdiction over the Guidelines Order. In accordance with the Woodford Opinion, the Guidelines Order should be vacated and the Commission should dismiss FPL's Petition because the Commission lacks jurisdiction to approve the Woodford Project and implement guidelines for future gas reserve projects similar to the Woodford Project.

Because the effect of reversal is to treat orders as if they had never been entered, *Savery*, 870 So. 2d at 921, any costs that were allowed to be recovered based on the orders will need to be removed from rates. No projects were implemented pursuant to the Guidelines Order, so there are no costs associated with the Guidelines Order that need to be removed from rates. Any costs associated with the Woodford Order that need to be removed from rates will be addressed in Docket No. 160001-EI.

The Court temporarily relinquished jurisdiction to the Commission to reconsider the Guidelines Order. If the Commission votes to vacate the Guidelines Order and dismiss FPL's Petition, staff counsel will notify the Court of the Commission's decision and take any additional steps necessary to resolve the pending appeals in Case Nos. SC15-1515 and SC15-1517.

**Issue 2:** Should these dockets be closed?

**Recommendation:** Docket No. 140001-EI should be closed. However, Docket No. 150001-EI should remain open in litigation status.

**Staff Analysis:** No further action is needed in Docket No. 140001-EI, so Docket No. 140001-EI should be closed. However, Docket No. 150001-EI should remain open in litigation status because the appeals of the Guidelines Order and another appeal in the docket unrelated to the Guidelines Order are still pending before the Court.

As discussed in Issue 1, there are no costs associated with the Guidelines Order that need to be removed from rates. Any costs associated with the Woodford Order that need to be removed from rates will be addressed in Docket No. 160001-EI.